

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT TACOMA

THAN ORN, an individual,

Plaintiff,

v.

CITY OF TACOMA, a municipal
corporation, and KRISTOPHER
CLARK, in his individual capacity,

Defendants.

NO.

Superior Court of the State of
Washington County of Pierce
No. 13-2-13886-2)

NOTICE OF REMOVAL OF ACTION
FROM STATE COURT

TO THE HONORABLE JUDGES OF THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF WASHINGTON

PLEASE TAKE NOTICE THAT, pursuant to 28 U.S.C. § 1441(a),
defendant hereby removes this action from the Superior Court of the State of
Washington, County of Pierce, to the United States District Court for the
Western District of Washington at Tacoma. Defendants appear solely for the
purpose of removal and for no other purpose, reserving all other defenses
available to defendant and alleges on information and belief as follows:

1 1. Plaintiff filed the above-captioned action against Defendants City
2 of Tacoma and Kristopher Clark in the Superior Court of the State of
3 Washington, County of Pierce, on October 10, 2013. The defendants were
4 served with a copy of the Summons and Complaint on October 16, 2013, a
5 copy of which is attached hereto as Exhibit A.

6 2. This Notice of Removal is being filed within 30 days after the
7 matter was filed in the Superior Court and served on the defendants, and thus
8 is timely filed pursuant to 28 U.S.C. § 1446(b).

9 3. This is a civil action for which the United States District Court has
10 original jurisdiction pursuant to 28 U.S.C. §1331, as plaintiff, Than Orn, has
11 asserted a violation of his civil rights as secured by federal law.
12

13 4. Plaintiff has also asserted state tort actions. Defendants request
14 that all claims be removed from the Superior Court of the State of Washington,
15 County of Pierce, and that this Court exercise supplemental jurisdiction over
16 these claims pursuant to 28 U.S.C. § 1367(a) and 28 U.S.C. §1441(c).

17 5. Pursuant to 28 U.S.C. § 1446(a), copies of all process, pleadings,
18 and orders served upon defendant to date are attached.

19 6. The defendants will promptly file a copy of this Notice in the
20 Superior Court of the State of Washington, County of Pierce, and will serve a
21 copy of the same on the plaintiff in accordance with 28 U.S.C. § 1446(d).
22

23 /
24
25
26

1 WHEREFORE, the defendants give notice that the above-captioned
2 action commenced against it in the Superior Court of the State of Washington,
3 County of Pierce, has been removed to this Court.

4 DATED this 8th day of November, 2013.

5 ELIZABETH A. PAULI, City Attorney

6
7 By: Jean Homan
8 JEAN P. HOMAN
9 WSBA# 27084
10 Deputy City Attorney
11 Attorney for Defs. City of Tacoma
12 and Kristopher Clark

13 **CERTIFICATE OF SERVICE**

14 I hereby certify that on 11-8-13, I electronically
15 filed, through my staff, the foregoing with the Clerk of the Court using the
16 CM/ECF system which will send notification of such filing to the attorneys of
17 record on file.

18 Jean Homan
19 JEAN P. HOMAN
20 WSBA#27084
21 Attorney for Def. City of Tacoma
22 Tacoma City Attorney's Office
23 747 Market Street, Suite 1120
24 Tacoma, WA 98402
25 (253) 591-5885
26 Fax: (253) 591-5755
jhoman@ci.tacoma.wa.us

RECEIVED

OCT 16 2013

**TACOMA CITY ATTORNEY
CIVIL DIVISION**

*VIA Delivery
Billie
Service a central
of Cheryl corner for
City of Tacoma only*

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

October 10 2013 10:57 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13886-2

**SUPERIOR COURT OF THE STATE OF WASHINGTON
FOR PIERCE COUNTY**

THAN ORN, individually,

Plaintiff,

vs.

CITY OF TACOMA, a municipal
corporation, and; KRISTOPHER CLARK, in
his individual capacity,

Defendants.

NO.

SUMMONS

TO ALL NAMED DEFENDANTS:

A lawsuit has been started against you in the above entitled court by Plaintiff. Plaintiff's claims are stated in the written Complaint, a copy of which is served upon you with this Summons.

In order to defend against this lawsuit, you must respond to the Complaint by stating your defense in writing, and serve a copy upon the person signing this Summons within 20 days after the service of this Summons, excluding the day of service, or a default judgment may be entered against you without notice. A default judgment is one where a Plaintiff is entitled to what he asks for because you have not responded. If you serve a notice of

SUMMONS 1 of 2



911 Pacific Avenue, Suite 200
Tacoma, WA 98402
Phone: (253) 777-0799 Facsimile: (253) 627-0654
www.pcvlaw.com

1 appearance on the undersigned person, you are entitled to notice before a default judgment
2 may be entered.


3 Any response or notice of appearance which you serve on any party to this lawsuit
4 must also be filed by you with the court within 20 days after the service of Summons,
5 excluding the day of service.
6

7 If you wish to seek the advice of an attorney in this matter, you should do so promptly
8 so that your written response, if any, may be served on time.
9

10 This Summons is issued pursuant to Rule 4 of Civil Rules for Courts of Limited
11 Jurisdiction.

12 Dated this 10th day of October, 2013.

13
14 PFAU COCHRAN VERTETIS AMALA, PLLC

15
16 By 
17 Darrell L. Cochran, WSBA No. 22851
18 Darrell@pcvalaw.com
19 Loren A. Cochran, WSBA No. 32773
20 loren@pcvalaw.com
21 Attorneys for Plaintiff

22
23 LAW OFFICE OF THOMAS A. BALERUD

24 By: /s/ Thomas A. Balerud

25 Thomas A. Balerud, WSBA No. 19539
26 Attorney for Plaintiff

2.2 Defendant City of Tacoma is a Washington municipal entity with police powers existing pursuant to the Washington State Constitution and the Constitution of the United States. Defendant City of Tacoma is responsible for formulating and implementing the Tacoma Police Department's policies and procedures and ensuring its officers are properly and adequately trained.

1 2.3 Defendant Kristopher Clark is or was at all relevant times a City of Tacoma
2 police officer who, all times relevant hereto, was acting under color of law.

3 **III. JURISDICTION AND VENUE**

4 3.1 Venue is proper in Pierce County under RCW 4.12.020.

5 3.2 Jurisdiction is proper under RCW 4.96.010 and 4.96.020. A City of Tacoma
6 claim for damages form was presented to the City of Tacoma, City Clerk's Office as directed
7 on the tort claim form. More than sixty (60) calendar days have elapsed since the filing of the
8 tort claim form such that filing of this action is allowed pursuant to Pursuant to RCW
9 4.96.020.
10

11 **IV. JURY DEMAND**

12 4.1 Plaintiff hereby demands a jury trial on the causes of action set forth herein.

13 **V. STATEMENT OF FACTS**

14 5.1 On October 12, 2011, at or around 8:30 p.m., Plaintiff Than Orn was driving
15 his family car, registered to his wife at his home address, in South Tacoma.

16 5.2 At or about that same time, upon information and belief, Tacoma Police
17 Department (TPD) Patrol Sgt. Alan Morris began following Orn allegedly because Orn was
18 driving without lights.
19

20 5.3 A short time later, Morris called over the police radio system to report that Orn
21 allegedly would not stop the vehicle. Approximately five (5) minutes after he began
22 following Orn, Morris told dispatch the vehicle was not driving recklessly, just that driver
23 allegedly would not stop.
24
25
26

1 5.5 Upon information and belief, TPD police units were ordered to conduct a
2 Pursuit Immobilization Technique (PIT) maneuver on Than Orn's vehicle but failed to do so.

3 5.6 At approximately 8:43 p.m., all units were ordered to stay in vehicles.

4 5.7 At or about this same time, Than Orn continued on toward his apartment
5 complex located at 6634 Tacoma Mall Boulevard. Upon information and belief, Orn's speed
6 never exceeded 30 miles per hour.
7

8 5.8 At approximately 8:46 p.m., Orn pulled into his apartment complex with TPD
9 K-9 Officer David Johnson directly behind him. Officer Johnson later testified under oath
10 that Orn's vehicle speed was little more than a crawl. Upon information and belief, Officer
11 Johnson ordered all units again to stay in their vehicles.

12 5.9 At or about this same time, Defendant Kristopher Clark was positioned, along
13 with approximately twelve (12) additional police units, at or very near the parking lot of Than
14 Orn's apartment complex waiting for Orn to arrive.
15

16 5.10 As Plaintiff Orn pulled into his apartment complex at little more than a crawl,
17 Defendant Kristopher Clark exited his police vehicle, despite orders to stay in his vehicle, and
18 according to TPD Officer Robert DeNully, Clark began "running and shooting" at Plaintiff
19 Than Orn. Defendant Clark is the only TPD officer to draw and fire his weapon at Orn.
20

21 5.11 Defendant Clark shot ten (10) times. According to a ballistics investigation,
22 eight (8) of Clark's shots entered through the rear of Than Orn's vehicle as Orn's vehicle was
23 moving away from Defendant Clark. The other two (2) shots by Clark were fired through the
24 rear passenger window or the rear passenger wing window. These two other shots were again
25 fired while Orn's vehicle traveled away from Defendant Clark.
26

1 of the path of police officers at an extremely slow speed but was nonetheless shot by a
 2 chasing Officer Clark in the back, back shoulder and the back of the neck.

3 6.5 As a direct and proximate result of these constitutional violations, Than Orn
 4 was shot and seriously and permanently injured, and continues to suffer, experiencing
 5 substantial physical, mental and emotional pain, anguish and anxiety.
 6

7 **B. Violations of Constitutional Rights by Defendant City of Tacoma.**

8 6.6 Plaintiff re-alleges the paragraphs set forth above.

9 6.7 Defendant City of Tacoma Police Department violated Plaintiff's
 10 Constitutional rights under the Fourth and Fourteenth Amendments to the U.S. Constitution,
 11 as set forth herein, and in other respects as well.

12 6.8 Defendant City of Tacoma and the Tacoma Police Department have customs,
 13 policies, and practices that amount to deliberate indifference to the rights of persons with
 14 whom its officers regularly come into contact, including nonviolent suspects like Than Orn.
 15

16 6.9 Defendants City of Tacoma and the Tacoma Police Department, with
 17 deliberate indifference, failed to train the Tacoma Police Department's law enforcement
 18 officers and failed to adopt and implement policies for, among other things, the use of de-
 19 escalation techniques, non-lethal tactics, proper nonviolent suspect apprehension techniques,
 20 and the decision-making process that should accompany use of deadly force.
 21

22 6.10 The failure by Defendant City of Tacoma and the Tacoma Police Department
 23 to adequately and appropriately train its officers and employee amounts to deliberate
 24 indifference to the rights of the persons with whom the Tacoma Police Department's
 25 employees regularly come into contact, including nonviolent suspects like Than Orn.
 26

1 6.11 It was highly predictable that Defendant's failures would result in
2 constitutional violations, like those that occurred in this case. Plaintiff's permanently
3 debilitating injuries are the foreseeable consequence of the Tacoma Police Department's
4 failure to equip its law enforcement officers with the necessary training and tools to handle
5 recurring situations, such as those involving a nonviolent suspect failing to yield or failing to
6 obey an officer's instructions.
7

8 6.12 The actions of the officers involved, which deprived the Plaintiff of his
9 Constitutional rights, conformed to official policy, custom, and practice of Defendant City of
10 Tacoma. Defendant City of Tacoma and the Tacoma Police Department's policy of shooting
11 an unarmed individual failing to yield, but avoiding officers and driving at an extremely low
12 speed is blatantly unconstitutional and jeopardizes the safety of all citizens, as evidenced by
13 the police shooting of Than Orn. Moreover, Defendant City of Tacoma has ratified the
14 conduct of Defendant Clark in relation to the injuries of Than Orn, by refusing to
15 appropriately sanction Defendant Clark for his actions.
16

17 6.13 As a result of the actions and deliberate indifference of Defendant City of
18 Tacoma and the Tacoma Police Department, Than Orn was shot multiple times in the back,
19 back shoulder and neck, including the spine. Plaintiff Orn is permanently injured and
20 continues to suffer, experiencing substantial physical, mental and emotional pain, anguish and
21 anxiety.
22

23 **C. Negligent and Grossly Negligent Hiring, Training and Supervision of**
24 **Employees and Agents.**

25 6.14 Plaintiff re-alleges the paragraphs set forth above.
26

1 6.15 Defendants have a duty to use reasonable care in hiring, training and
2 supervising employees and agents.

3 6.16 Defendants breached this duty in a negligent and grossly negligent manner. As
4 a proximate result of Defendants' breach, Than Orn is permanently injured and continues to
5 suffer, experiencing substantial physical, mental and emotional pain, anguish and anxiety.
6

7 **F. Respondeat Superior**

8 6.17 Plaintiff re-alleges the paragraphs set forth above.

9 6.18 At all times material herein, Defendants were responsible for the actions of
10 their agents and employees under the theory of *respondeat superior*.
11

12 **VII. PRAYER FOR RELIEF**

13 WHEREFORE, Plaintiff requests a judgment for Plaintiff and against Defendants
14 Kristopher Clark and the City of Tacoma as follows:

15 1) Awarding general, special and punitive damages, including damages for pain
16 and suffering, pursuant to 42 U.S.C. §§ 1983 and 1988, in an amount to be proven at trial;

17 2) Awarding costs and reasonable attorneys' fees pursuant to 42 U.S.C. § 1988,
18 or as otherwise available under the law;

19 3) General and special damages as allowed by Washington law, including but not
20 limited to economic and non-economic injuries in an amount to be proven at trial;

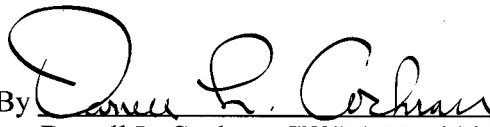
21 4) Awarding any and all applicable interest on the judgment; and
22

23 5) Awarding such other and further relief as the Court deems just and proper.
24

25 //
26 //

1 DATED this 9th day of October, 2013.

2 PFAU COCHRAN VERTETIS AMALA, PLLC

3
4
5 By 
6 Darrell L. Cochran, WSBA No. 22851
7 darrell@pcvalaw.com
8 Loren A. Cochran, WSBA No. 32773
9 loren@pcvalaw.com
10 Attorneys for Plaintiff

11
12 LAW OFFICE OF THOMAS A. BALERUD

13 By: /s/ Thomas A. Balerud
14 Thomas A. Balerud, WSBA No. 19539
15 Attorney for Plaintiff

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4824-8909-5190, v. 1

RECEIVED

E-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

October 10 2013 10:57 AM

IN THE SUPERIOR COURT OF THE STATE OF WASHINGTON
IN AND FOR PIERCE COUNTY

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13886-2

THAN ORN

Plaintiff(s)

Vs.

CITY OF TACOMA

Defendant(s)

No. 13-2-13886-2

ORDER SETTING CASE SCHEDULE

Type of case: PIN
Estimated Trial (days):
Track Assignment: Standard
Assignment Department: 06
Docket Code: ORSCS

Confirmation of Service	11/7/2013
Confirmation of Joinder of Parties, Claims and Defenses	2/6/2014
Jury Demand	2/13/2014
Status Conference (Contact Court for Specific Date)	Week of 3/6/2014
Plaintiff's/Petitioner's Disclosure of Primary Witnesses	4/3/2014
Defendant's/Respondent's Disclosure of Primary Witnesses	5/1/2014
Disclosure of Rebuttal Witnesses	6/19/2014
Deadline for Filing Motion to Adjust Trial Date	7/17/2014
Discovery Cutoff	8/21/2014
Exchange of Witness and Exhibit Lists and Documentary Exhibits	9/4/2014
Deadline to file Certificate or Declaration re: Alternative Dispute Resolution (PCLR 16 (c)(3))	9/11/2014
Deadline for Hearing Dispositive Pretrial Motions	9/11/2014
Joint Statement of Evidence	9/11/2014
Pretrial Conference (Contact Court for Specific Date)	Week of 9/25/2014
Trial	10/9/2014 9:00

Unless otherwise instructed, ALL Attorneys/Parties shall report to the trial court at 9:00 AM on the date of trial.

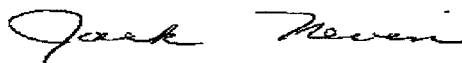
NOTICE TO PLAINTIFF/PETITIONER

If the case has been filed, the plaintiff shall serve a copy of the Case Schedule on the defendant(s) with the summons and complaint/petition: Provided that in those cases where service is by publication the plaintiff shall serve the Case Schedule within five (5) court days of service of the defendant's first response/appearance. If the case has not been filed, but an initial pleading is served, the Case Schedule shall be served within five (5) court days of filing. See PCLR 3.

NOTICE TO ALL PARTIES

All attorneys and parties shall make themselves familiar with the Pierce County Local Rules, particularly those relating to case scheduling. Compliance with the scheduling rules is mandatory and failure to comply shall result in sanctions appropriate to the violation. If a statement of arbitrability is filed, PCLR 3 does not apply while the case is in arbitration.

Dated: October 10, 2013



Judge JACK NEVIN
Department 06

RECEIVED**OCT 16 2013**TACOMA CITY ATTORNEY
CIVIL DIVISIONvia Deling
10:40 36
service accepted
by Cheryl Loman for
city of Tacoma onlyE-FILED
IN COUNTY CLERK'S OFFICE
PIERCE COUNTY, WASHINGTON

October 10 2013 10:57 AM

KEVIN STOCK
COUNTY CLERK
NO: 13-2-13886-2**SUPERIOR COURT OF WASHINGTON FOR PIERCE COUNTY****CASE COVER SHEET / CIVIL CASES**

THAN ORN VS. CITY OF TACOMA

Case Title _____ Case Number 13-2-13886-2

Atty/Litigant DARRELL L. COCHRAN Bar # 22851 Phone (253) 777-0799

Address 911 Pacific Ave Ste 200

City TACOMA State WA Zip 98402

Please check one category that best describes this case for indexing purposes.

*If you cannot determine the appropriate category, please describe the cause of action below. This will create a Miscellaneous cause which is not subject to PCLR 3.***APPEAL / REVIEW**

- ___ Administrative Law Review (ALR 2) *REV 6*
- ___ Civil, Non-Traffic (LCA 2) *REV 6*
- ___ Civil, Traffic (LCI 2) *REV 6*
- ___ Land Use Petition (LUP 2) *LUPA*

CONTRACT / COMMERCIAL

- ___ ♦Breach of Contract, Commercial Non-Contract or Commercial-Contract (COM 2) *STANDARD*
- ___ Third Party Collection (COL 2) *REV 4*

JUDGMENT

- ___ ♦Judgmt, Another County or Abstract Only (ABJ 2) *Non PCLR*
- ___ Transcript of Judgment (TRJ 2) *Non PCLR*
- ___ ♦Foreign Judgment Civil or Judgement, Another State (FJU 2) *Non PCLR*

TORT / MOTOR VEHICLE

- ___ ♦Death, Non-Death Injuries or Property Damage Only (TMV 2) *STANDARD*

TORT / NON MOTOR VEHICLE

- ___ Other Malpractice (MAL 2) *COMPLEX*
- ✓ Personal Injury (PIN 2) *STANDARD*
- ___ Property Damage (PRP 2) *STANDARD*
- ___ Wrongful Death (WDE 2) *STANDARD*
- ___ ♦Other Tort, Products Liability or Asbestos (TTO 2) *COMPLEX*

MISCELLANEOUS**PROPERTY RIGHTS**

- ___ Condemnation (CON 2) *STANDARD*
- ___ Foreclosure (FOR 2) *REV 4*
- ___ Property Fairness (PFA 2) *STANDARD*
- ___ Quiet Title (QTI 2) *STANDARD*
- ___ Unlawful Detainer / Eviction (UND 2) *REV 4*
- ___ Unlawful Detainer / Contested (UND 2) *REV 4*

OTHER COMPLAINT OR PETITION

- ___ ♦Compel/Confirm Bind Arbitration, Deposit of Surplus Funds, Interpleader, Subpoenas, Victims' Employment Leave, or Wireless Number Disclosure, Miscellaneous (MSC 2) *REV 4*
- ___ Injunction (INJ 2) *REV 4*
- ___ Malicious Harassment (MHA 2) *Non PCLR*
- ___ Meretricious Relationship (MER 2) *REV 4*
- ___ Minor Settlement/No Guardianship (MST2) *REV 4*
- ___ Pet for Civil Commit/Sex Predator (PCC2) *REV 4*
- ___ Property Damage Gangs (PRG 2) *REV 4*
- ___ Seizure of Property/Comm. of Crime (SPC2) *REV 4*
- ___ Seizure of Property Result from Crime (SPR2) *REV 4*

TORT / MEDICAL MALPRACTICE

- ___ ♦Hospital, Medical Doctor, or Other Health Care Professional (MED2) *COMPLEX*

WRIT

- ___ Habeas Corpus (WHC 2) *REV 4*
- ___ Mandamus (WRM 2) *REV 4*
- ___ Review (WRV 2) *REV 4*
- ___ Miscellaneous Writ (WMW 2) *REV 4*